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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-339
Obligations of Local Exchange Carriers)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications Act of 1996)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	

To: The Commission

**PETITION TO RELEASE CERTAIN FORM 477
DATA FILED BY BELL OPERATING COMPANIES**

The Promoting Active Competition Everywhere ("PACE") Coalition,¹ by its attorneys, hereby petitions the Commission to release for public inspection and analysis, the responses to Part II—Questions One through Five of the Local Competition and Broadband Reporting Form 477 ("FCC Form 477") (including updates and revisions to responses) filed with the Commission by the Bell Operating Companies ("BOCs") since the reporting requirement was first implemented.²

I. DISCUSSION

As the Commission noted in its *Notice of Proposed Rulemaking* initiating the Triennial Review of its Section 251 unbundling rules:

¹ Carrier members of the PACE Coalition include Access Integrated Networks, Inc., Birch Telecom, IDS Telecom, LLC, InfoHighway Communications Corp., ITC^DeltaCom Communications, Inc., nii communications, TalkAmerica, and Z-Tel.

² See *Local Competition Report and Order*, CC Docket 99-301, 15 FCC Rcd 7717 (rel. Mar. 30, 2000) ("477 Order").

Based on our experience from prior proceedings, we anticipate that we will find evidence of actual marketplace conditions to be more probative than other kinds of evidence ... [w]e invite parties to suggest what data would be useful to our consideration in this proceeding, including how any of the information the Commission routinely collects could be of use.³

Clearly, the only way that parties can most effectively make use of the information the Commission routinely collects is if that data is made available for public analysis and discussion. The most comprehensive and consistent source of local competition information is that provided by the ILECs in the Commission's Local Competition and Broadband Reporting Form 477. Indeed, in adopting the rules requiring carriers to submit Form 477 information, the Commission noted that other publicly available information voluntarily provided by carriers is, for the most part, not reliable. The Commission understood that publicly available information:

presents less than complete pictures of actual conditions and trends in developing local telephone service markets and in the deployment of broadband. Nor do we find, among the publicly available sources suggested by commenters, that type of regular, consistent and comprehensive data necessary to illustrate developments in these markets... We find these [public] sources to be incomplete and inconsistent... Among LECs, some may report information, such as the share of total access lines provided solely over their own facilities, in greater detail than other providers report. It is also our experience that publicly available reports often contain data reflecting incongruent time periods.⁴

Accordingly, the Commission concluded in the *477 Order* that a mandatory reporting requirement would lead to more consistent and accurate reporting, and further reasoned that

³ *In the Matter of Review of Section 251 Unbundling Obligations of Local Exchange Carriers*, CC Docket No. 01-339, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, and *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *Notice of Proposed Rulemaking*, ¶ 17 (rel. Dec. 20, 2001) ("*Triennial Review NPRM*"), (footnotes omitted).

⁴ *477 Order* at ¶ 14 (footnotes omitted).

“mandatory information collection from a broad array of providers will enable us to **draw specific, reliable, and accurate conclusions about the state of local competition and broadband deployment in particular geographic markets—conclusions we can document over time.**”⁵

The Commission was very prescient in adopting the Form 477 reporting requirement. Indeed, the raw data provided by Form 477 is exactly the type of information necessary to conduct the real-world analysis of local marketplace conditions that the Commission has requested parties provide, as the Commission re-examines its Section 251 unbundling rules.⁶

Unfortunately, while the Form 477 data collected by the Commission could provide state-by-state time series data to evaluate (among other topics) the competitive penetration achieved by UNE loops used with and without local switching, as well as resale (the subject of Part II of Form 477), the Commission has not previously released this data for public analysis, despite the fact that the Commission’s *477 Order* specifically anticipated that such information would be made available unless the carrier providing the information requested confidential treatment of it.⁷ As a consequence of the Commission’s decision not to make public this information, parties

⁵ *477 Order* at ¶ 15 (footnote omitted)(emphasis added).

⁶ *Triennial Review NPRM*, ¶ 17.

⁷ Form 477 requires that the ILECs disaggregate UNE loop data between loops provided with and without local switching on a state-by-state basis. *See* Part II, Questions Four and Five. Furthermore, FCC Form 477, in Section IV. C specifically notes that the information provided therein “may be made publicly available. Any respondent to this form may submit a request that information on the FCC Form 477 not be made routinely available for public inspection by so indicating on Line 9 of the form and on the Certification Statement. *See also* 47 C.F.R. §§0.457, 0.459, 1.7001(d), 43.11(c); *Examination of the Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, FCC 98-184 (rel. Aug. 4, 1998). Respondents seeking confidential treatment should provide a separate diskette containing a redacted version of all files. Note that these redacted files must be given different names from the complete filings, as specified above. Redacted data should be replaced with “xxxxxx” in the redacted data file.”

(other than the ILEC) wishing to provide the Commission with the type of granular marketplace evidence that it has requested in its Triennial Review proceeding will be significantly hindered.

Importantly, there is no legal or public policy rationale for the Commission to withhold the BOCs' responses to Form 477 Part II, Questions One through Five. Indeed, no one could claim that the responses contained therein contain proprietary or confidential information. In fact, both SBC and BellSouth have provided copies of these filings for their ILEC affiliates in a number of states without once requesting confidential treatment of the information.⁸ To the extent that the BOCs or the Commission assert that the information is already publicly available from other sources, "albeit at greater difficulty, this fact would suggest that the information is not confidential."⁹ Indeed, the Commission has even publicly released audit information in aggregate form where "(i) the summary nature of the data therein is not likely to cause the submitter substantial competitive injury; (ii) the release of the summary data and information is not likely to impair our ability to obtain information in future audits; and (iii) overriding public interest concerns favor release of the report."¹⁰ The revised information contained in the Form 477 is obviously no where near as sensitive information contained a company audit report.

⁸ See e.g., *BellSouth Response to AT&T and MCI's Second Request for Production of Documents*, Florida Public Service Commission Docket 990649-TP; *Ameritech Illinois Response to AT&T Communications, Inc., First Set of Data Requests*, No. JPG-1, Illinois Commerce Commission Docket No. 01-0614.

⁹ See *Examination of the Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, ¶17 (rel. Aug. 4, 1998).

¹⁰ See *Examination of the Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, ¶ 53 (footnotes omitted).

Moreover, BOCs routinely disclose UNE volumes (including loops and UNE-platform combinations) in support of Section 271 applications at the Commission without requesting that the information be kept confidential.¹¹ Finally, the BOCs have previously disclosed similar information in voluntary responses to earlier surveys on local competition conducted by the Commission's Common Carrier Bureau.¹² Industry practice is to view this information as non-proprietary, and there is no reason to deny public access to this information, particularly in light of the critically important role that this data could play in helping the Commission understand *where* competition is developing most rapidly as well as *why*.

Notably, there is a very critical difference between the "market-level" data on UNE penetration contained in the ILECs' Form 477 responses, and the potentially competitively sensitive information provided by an individual purchaser of UNEs. As the wholesale UNE-supplier, the ILECs' Form 477 provides an aggregate view of UNE penetration that would inform the Commission as to the overall development of competition in a particular local market, without revealing information unique to any specific competitor.

II. CONCLUSION

For all of the foregoing reasons, the PACE Coalition hereby requests that the Commission, expeditiously release all BOC responses to Form 477, Part II, Questions One through Five, filed since the Form 477 reporting requirement was implemented (including any

¹¹ See e.g., Wakeling Affidavit, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 01-277 (filed Oct. 2, 2001).

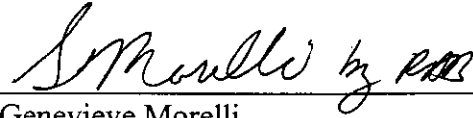
¹² See e.g., Responses to Fifth Survey on Local Competition.

revisions or amended filings), so that a full record may be developed in the Triennial Review proceeding.

Respectfully Submitted:

THE PACE COALITION

By:

A handwritten signature in cursive script, appearing to read "Genevieve Morelli", written over a horizontal line.

Genevieve Morelli

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